

(2011) 07 DEL CK 0368
In the Delhi High Court
Case No : Criminal Appeal No. 659 of 2008

Shahzad Khan	Vs	APPELLANT
The State (NCT of Delhi)		RESPONDENT

Date of Decision : 26-07-2011

Acts Referred:

Arms Act, 1959 — Section 25, 27
Criminal Procedure Code, 1973 (CrPC) — Section 313, 428
Penal Code, 1860 (IPC) — Section 34, 392, 397
Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 3, 4, 6

Citation : (2011) 07 DEL CK 0368

Hon'ble Judges : Ajit Bharihoke, J

Bench : Single Bench

Advocate : K. Singhal, for the Appellant; Fizani Husain, APP, for the Respondent

Final Decision : Partly Allowed

Judgement

Ajit Bharihoke, J.—This appeal is directed against the impugned judgment dated 24th July, 2008 in Sessions Case No. 109/2007, FIR No. 394/2003, under Sections 392/397/34 IPC and 27 of the Arms Act, P.S. Malviya Nagar and consequent order on sentence dated 25th July, 2008 whereby the Appellant Shahzad Khan has been convicted for the offences punishable under Sections 392 IPC as also Section 25 of the Arms Act and sentenced to undergo RI for 07 years, besides fine of Rs. 5000/- for the offence u/s 392 IPC and for the offence u/s 25 of the Arms Act, he has been sentenced to undergo RI for the period of one year, besides fine of Rs. 1000/-.

2. Briefly stated, background facts for the disposal of this appeal are that the Appellant Shahzad Khan, along with two others was sent for trial in case FIR No. 394/2003 under Sections 392/397/34 IPC and Section 27 of the Arms Act on the allegations that on the night intervening 15/16th May, 2003, at around 11.30 p.m., the Appellant and his co-accused persons hired the TSR of the complainant for going to Malviya Nagar. On the way, near Andhra School, they asked to stop

the TSR. Thereafter, they robbed the complainant of Rs. 400/- and a polythene packet, which contained his driving licence, voter card and TSR documents. Thereafter, the Appellant and his co-accused persons pushed him out of the TSR and fled away in the same TSR. However, Constable Radhey Ram and Constable Ram Niwas, who were coming from the side of Pushp Vihar on a motor cycle chased them and apprehended them. It is alleged, on search, a knife was recovered from the possession of the Appellant.

3. The Appellant was charged for the offence punishable under Sections 392/397/34 IPC and Section 27 of the Arms Act. He pleaded not guilty and claimed trial.

4 In order to bring home the guilt of the Appellant, prosecution has examined 16 witnesses, including the complainant, as also two Constables who chased the TSR and apprehended the Appellant and his co-accused persons.

5. The Appellant, in his statement, u/s 313 Code of Criminal Procedure denied the prosecution story and claimed to be innocent.

6. Learned Additional Sessions Judge, on consideration of the submissions made by the parties and the evidence on record, found the Appellant guilty of Sections 392 IPC as also Section 25 of the Arms Act and convicted and sentenced him accordingly.

7. Learned Shri K. Singhal, Advocate appearing for the Appellant, at the outset, on the instructions of the Appellant, who is present in court, submits that the Appellant admits his guilt and he does not wish to challenge his conviction u/s 392 IPC and Section 25 of the Arms Act. Learned Counsel, however, has confined his arguments against the quantum of sentence awarded to the Appellant. Learned Counsel submits that the sentence awarded to the Appellant is too harsh and learned Additional Sessions Judge, while sentencing the Appellant, has ignored the fact that the Appellant, at the time of commission of offence, was a young man of around 20 years. He did not have previous criminal record and it was his first brush with the crime. Learned Counsel submits that the Appellant during the intervening period, has realized his mistake and he is in the mood of remorse and repentance. He deserves at least one chance to mend his ways and prove to be a useful member of the society. Thus, learned Counsel has vehemently urged for reduction of sentence awarded to the Appellant.

8. Learned APP, on the other hand, submits that considering the gravity of the offence committed by the Appellant, there is no reason for reduction of sentence in this case. Thus, she has urged for dismissal of appeal.

9. I have considered the rival contentions. Sentencing of an accused in a criminal matter is a serious exercise and the quantum of sentence imposed commensurate with the gravity of the offence committed by the accused and the circumstances under which the offence was committed. While dealing with the issue of sentence for the offences under Sections 3, 4 & 6 of Terrorist and

Disruptive Activities (Prevention) Act, 1987, Supreme Court in the matter of Karamjit Singh Vs. State (Delhi Admn.), wherein the Supreme Court, has inter alia, observed thus:

7. ...Punishment in criminal cases is both punitive and reformatory. The purpose is that the person found guilty of committing the offence is made to realise his fault and is deterred from repeating such acts in future. The reformatory aspect is meant to enable the person concerned to relent and repent for his action and make himself acceptable to the society as a useful social being. In determining the question of proper punishment in a criminal case, the court has to weigh the degree of culpability of the accused, its effect on others and the desirability of showing any leniency in the matter of punishment in the case. An act of balancing is, what is needed in such a case; a balance between the interest of the individual and the concern of the society; weighing the one against the other. Imposing a hard punishment on the accused serves a limited purpose but at the same time, it is to be kept in mind that relevance of deterrent punishment in matters of serious crimes affecting society should not be undermined. Within the parameters of the law an attempt has to be made to afford an opportunity to the individual to reform himself and lead the life of a normal, useful member of society and make his contribution in that regard. Denying such opportunity to a person who has been found to have committed offence in the facts and circumstances placed on record would only have a hardening attitude towards his fellow beings and towards society at large. Such a situation, has to be avoided, again within the permissible limits of law.

8. After giving our anxious consideration to the question of reduction of sentence as urged on behalf of the Appellant and objected to on behalf of the Respondent, we have come to the conclusion that some consideration should be shown to the Appellant in the matter. In coming to this conclusion we have taken into account the facts that he has spent a long period, more than thirteen years, in jail; that he was a young man of 21 years when he committed the act giving rise to the case; that the situation then prevailing in the State of Punjab was surcharged with acts of terrorism and several misguided young men were drawn into the movement; that in the meantime the movement has subsided and it could be reasonably taken that the State is free from the menace of terrorism. In taking the decision to show some consideration to the Appellant in the matter of punishment we have reposed confidence in goodness of human character which is a part of the personality of every human being. We hope and believe that our confidence will not be belied in the case of the Appellant. In the facts and circumstances of the case and the changed social environment which has taken place in the meantime, it is our considered view that the sentence of life imprisonment should be modified to the period already undergone (about 13 years 7 months). Before being released from jail in the case, the Appellant will notify the jail authority the place and the address at which he intends to stay, on receipt of which the jail authority will intimate the Superintendent of Police of that place with a request to him to keep the Appellant under observation. If the

Superintendent of Police finds that the Appellant is indulging in any illegal activity which amounts to an offence under any law, he shall immediately send a report to the Registrar General of this Court. With this modification of sentence as noted above, this appeal is dismissed.

10. In the case in hand, the Appellant is a young man aged about 29 years. As per the nominal roll received from Central Jail No. 3, Tihar, the Appellant has undergone incarceration for a period of 01 year and 10 months (approximately) as on 25.11.2009. Even thereafter he remained in custody. Therefore, his overall period of incarceration till date obviously is approximately 3 1/2 years. Besides that, he must have earned some remission in sentence. As per the nominal roll, the conduct of the Appellant during custody was found satisfactory and till 25.11.2009 he did not avail benefit of parole or interim bail. Taking into account the nature of the offence committed by the Appellant and the fact that the Appellant is a first offender, to my mind, the imprisonment of 07 years RI for offence u/s 392 IPC is too harsh. He deserves at least a chance to mend his ways and become a useful member of the society.

11. In view of the discussion above, while maintaining the conviction of the Appellant u/s 392 IPC and Section 25 of the Arms Act and also maintaining the sentence of fine imposed upon the Appellant, the substantive sentence awarded to the Appellant for offence u/s 392 IPC is reduced from 07 years RI to 3 1/2 years RI. The sentence for the offence u/s 25 of the Arms Act is maintained as it is. Needless to say, both the sentences shall run concurrently and the Appellant shall get the benefit of Section 428 CrPC.

12. The appeal is partly accepted, subject to the aforesaid modification in the impugned order on sentence.

13. Copy of the order be sent to the concerned Jail Superintendent for information and necessary compliance.